

CV, PATENT

**U.S. District Court
District of Minnesota (DMN)
CIVIL DOCKET FOR CASE #: 0:08-cv-05275-JNE-JJK
Internal Use Only**

ADC Telecommunications, Inc. v. ATX Incorporated et al
Assigned to: Judge Joan N. Ericksen
Referred to: Magistrate Judge Jeffrey J. Keyes
Cause: 15:1126 Patent Infringement

Date Filed: 09/26/2008
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff**ADC Telecommunications, Inc.**

represented by **Alan G Carlson**
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LEAD ATTORNEY

patent No. 7,197,294
patent No. 6,650,885
patent No. 6,289,210

c. A judgment that Defendants ATX and PCI have infringed the '885 patent.

d. Both preliminary and permanent injunctions enjoining and restraining Defendants ATX and PCI, their officers, directors, agents, servants, employees, attorneys and all others acting under or through them, directly or indirectly, from infringing the '885 patent;

e. A judgment that Defendants ATX and PCI have infringed the '210 patent.

f. Both preliminary and permanent injunctions enjoining and restraining Defendants ATX and PCI, their officers, directors, agents, servants, employees, attorneys and all others acting under or through them, directly or indirectly, from infringing the '210 patent;

g. A judgment that ATX and PCI have breached the Settlement Agreement.

h. A judgment and order requiring Defendants ATX and PCI to pay all appropriate damages under 35 U.S.C. § 284, including treble damages if any of the infringements is determined to be willful;

i. A judgment and order requiring Defendants ATX and PCI to pay the costs of this action, including all disbursements and attorney fees, if this case is exceptional as provided by 35 U.S.C. § 285;

- j. A judgment in an amount in excess of \$75,000 compensating ADC for its damages and injuries due to the Defendants' breach of the Settlement Agreement; and
- k. Such other and further relief that this Court may deem just and equitable.

Demand for Jury Trial

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs ADC demands a trial by jury of all issues so triable.

Dated: September 26, 2008 ADC Telecommunications, Inc.,

By its attorneys,



Alan G. Carlson (MN Bar No. 14,801)
Philip P. Caspers (MN Bar No. 192,569)
Timothy A. Lindquist (MN Bar No. 245,318)
Samuel A. Hamer (MN Bar No. 294,469)
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ADC Telecommunications, Inc.
13625 Technology Drive
Eden Prairie, Minnesota 55344

(b) County of Residence of First Listed Plaintiff Hennepin
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Alan G. Carlson, Philip P. Caspers, Timothy A. Lindquist, Susan H. A. Carlson, James R. Hietala
CARLSON, CASPERS, VANDENBURGH & LINDQUIST
225 South Sixth Street, Suite 3200
Minneapolis, Minnesota 55402 612-436-9600

DEFENDANTS

ATX Incorporated and PCI Technologies Inc.
1-501 Clements Road West 1-501 Clements Road West
Ajax, ON L1S 7H4, Canada Ajax, ON L1S 7H4, Canada

County of Residence of First Listed Defendant Durham Region

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☒ 3 Federal Question

(U.S. Government Not a Party)

☐ 2 U.S. Government Defendant

☐ 4 Diversity

(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise					<input type="checkbox"/> 890 Other Statutory Actions
					<input type="checkbox"/> 891 Agricultural Acts
					<input type="checkbox"/> 892 Economic Stabilization Act
					<input type="checkbox"/> 893 Environmental Matters
					<input type="checkbox"/> 894 Energy Allocation Act
					<input type="checkbox"/> 895 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 U.S.C. § 271 et seq.

Brief description of cause: This action includes counts for patent infringement under 35 U.S.C. § 271 et seq. as well as both preliminary and permanent injunctions

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

September 26, 2008

SIGNATURE OF ATTORNEY OF RECORD

Philip P. Caspers

SEP 26 2008

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RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ATTORNEY TO BE NOTICED

V.

Defendant

ATX Incorporated

Defendant

PCI Technologies Inc

Date Filed	#	Docket Text
09/26/2008	<u>1</u>	COMPLAINT against ATX Incorporated, PCI Technologies Inc (Filing fee \$ 350 receipt number 4027085.) assigned to Judge Joan N. Ericksen per Patent list and referred to Magistrate Judge Jeffrey J. Keyes, filed by ADC Telecommunications, Inc. (Attachments: # <u>1</u> Civil Cover Sheet) (RLR) (Entered: 09/29/2008)
09/26/2008		Summons Issued as to ATX Incorporated, PCI Technologies Inc. (RLR) (Entered: 09/29/2008)
09/26/2008	<u>2</u>	RULE 7.1 DISCLOSURE STATEMENT by ADC Telecommunications, Inc. that there is no such parent or publicly held corporation to report. (RLR) (Entered: 09/29/2008)
09/29/2008		(Court only) *** Copy of complaint sent to the Patent Office. (RLR) (Entered: 09/29/2008)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ADC Telecommunications, Inc.,

Plaintiff,

v.

ATX Incorporated and PCI
Technologies Inc.,

Defendants.

Civil Action No. 08cv5275 JNE/JJK

Judge: _____

Mag. Judge: _____

Jury Trial Demanded

Complaint

This is a complaint for patent infringement and breach of contract.

Plaintiff, ADC Telecommunications, Inc. ("ADC"), for its Complaint,
states as follows:

1. Plaintiff ADC is a corporation organized and existing under the laws of Minnesota and has a principal place of business at 13625 Technology Drive, Eden Prairie, Minnesota 55344.
2. Upon information and belief, Defendant, ATX Incorporated ("ATX"), is a Canadian corporation having a principal place of business at 1-501 Clements Road West, Ajax, ON L1S 7H4 Canada.

SCANNED

SEP 26 2008

U.S. DISTRICT COURT MPLS

3. Upon information and belief, Defendant, PCI Technologies Inc. ("PCI"), is a Canadian corporation having a principal place of business at 1-501 Clements Road West, Ajax, ON L1S 7H4 Canada.

4. Upon information and belief, PCI is a wholly owned subsidiary of ATX.

Jurisdiction

5. This action includes counts for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 et seq. This Court has subject matter jurisdiction over the patent infringement counts under 28 U.S.C. §§ 1331 and 1338(a).

6. This action also includes a count for breach of contract. The Court has jurisdiction over the breach of contract count at least under 28 U.S.C. §§ 1367(a) and 1332.

Count I

Claim for Patent Infringement of U.S. Patent No. 7,197,294

7. Paragraphs 1–6 are incorporated into this count by reference.

8. ADC is the owner of the entire right, title, and interest in and to United States Patent No. 7,197,294 ("the '294 patent") which duly and legally issued to ADC on March 27, 2007.

9. ADC has satisfied the notice or marking provisions of 35 U.S.C. § 287.

10. Defendants ATX and PCI (collectively, "the Defendants") are involved in making, importing, selling and/or offering for sale RF signal management products, including without limitation certain products within Defendants' MAXNET II line of products, that are covered by the '294 patent.

11. The Defendants, by their actions relating to at least their MAXNET II line of products, have directly and/or indirectly infringed the '294 patent and will continue to do so unless enjoined by this Court.

12. ADC has been damaged by the Defendants' infringement of the '294 patent and will continue to be damaged in the future unless the Defendants are enjoined from infringing the '294 patent.

Count II

Claim for Patent Infringement of U.S. Patent No. 6,650,885

13. Paragraphs 1-6 are incorporated into this count by reference.

14. ADC is the owner of the entire right, title, and interest in and to United States Patent No. 6,650,885 ("the '885 patent") which duly and legally issued to ADC on November 18, 2003.

15. ADC has satisfied the notice or marking provisions of 35 U.S.C. § 287.

16. The Defendants are involved in making, importing, selling and/or offering for sale RF signal management products, including without limitation certain products within Defendants' MAXNET and MAXNET II line of products, that are covered by the '885 patent.

17. The Defendants, by their actions relating to at least their MAXNET and MAXNET II line of products, have directly and/or indirectly infringed the '885 patent and will continue to do so unless enjoined by this Court.

18. ADC has been damaged by the Defendants' infringement of the '885 patent and will continue to be damaged in the future unless the Defendants are enjoined from infringing the '885 patent.

19. Upon information and belief, the Defendants' infringement of the '885 patent is willful.

Count III

Claim for Patent Infringement of U.S. Patent No. 6,289,210

20. Paragraphs 1-6 are incorporated into this count by reference.

21. ADC is the owner of the entire right, title, and interest in and to United States Patent No. 6,289,210 ("the '210 patent") which duly and legally issued to ADC on September 11, 2001.

22. ADC has satisfied the notice or marking provisions of 35 U.S.C. § 287.

23. The Defendants are involved in making, importing, selling and/or offering for sale RF signal management products, including without limitation certain products within Defendants' MAXNET II line of products, that are covered by the '210 patent, including at least claims 88, 90, and 91 of the '210 patent.

24. The Defendants, by their actions relating to at least their MAXNET II line of products, have directly and/or indirectly infringed the '210 patent and will continue to do so unless enjoined by this Court.

25. ADC has been damaged by the Defendants' infringement of the '210 patent and will continue to be damaged in the future unless the Defendants are enjoined from infringing the '210 patent.

26. Upon information and belief, the Defendants' infringement of the '210 patent is willful.

Count IV
Claim for Breach of Contract

27. Paragraphs 1-6 and 20-26 are incorporated into this count by reference.

28. On October 23, 2002, ADC and PCI entered into a written Settlement Agreement ("Settlement Agreement") to end a prior litigation in which ADC accused PCI of infringing the '210 patent.

29. The Settlement Agreement constitutes a binding contract between PCI and ADC.

30. In Paragraph 13 of the Settlement Agreement, PCI agreed that the "Settlement Agreement shall be governed in all respects by the laws of the State of Minnesota without regard to choice of law analysis."

31. ADC has fully performed its duties under the Settlement Agreement including filing a stipulated dismissal of ADC's claims in the prior litigation as required by Paragraph 1 of the Settlement Agreement.

32. In Paragraph 2 of the Settlement Agreement, PCI agreed "not to make, sell or offer for sale in the United States, for the life of U.S. Patent No. 6,289,210 B1, the MAXNET modules of Exhibits 1 and 2 of this Settlement Agreement or any other modules that infringe asserted claims 88, 90 and 91 of the '210 patent, except as such modules may be modified as described under paragraph 5."

33. As more fully set forth in paragraphs 20-26 above, PCI, through making, selling, and/or offering for sale certain modules within its MAXNET II line of products, infringes claims 88, 90, and 91 of the '210 patent.

34. The modules in PCI's MAXNET II line that infringe at least claims 88, 90, and 91 of the '210 patent do not fall within any of the exceptions allowed under paragraphs 2 and/or 5 of the Settlement Agreement.

35. Through its manufacture, sale and/or offer for sale of its MAXNET II line of products, PCI has breached the Settlement Agreement and is therefore liable to ADC for damages in excess of \$75,000.

36. On information and belief, ATX is PCI's successor in interest and is therefore liable for the harm caused by the breach of the Settlement Agreement.

Demand for Relief

ADC respectfully demands the following relief:

- a. A judgment that Defendants ATX and PCI have infringed the '294 patent.
- b. Both preliminary and permanent injunctions enjoining and restraining Defendants ATX and PCI, their officers, directors, agents, servants, employees, attorneys and all others acting under or through them, directly or indirectly, from infringing the '294 patent;